

# SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

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Date: June 27, 2006

To: Jack Gindi, President – City Merchandise Inc.

California Attorney General's Office;  
District Attorney's Office for 58 Counties;  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles;

From: Russell Brimer

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## I. INTRODUCTION

My name is Russell Brimer. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6 *et seq.* ("Proposition 65") and supplements the notice sent on September 2, 2005. As noted above, notice is being provided to the violator, City Merchandise, Inc. (the "Violator"). The violations covered by this Notice consist of the product exposures, routes of exposures, and types of harm potentially resulting from exposure to the toxic chemicals ("listed chemicals") identified below, as follows:

Product Exposure: See Section VI. Exhibit A  
Listed Chemicals: Lead; Cadmium  
Routes of Exposure: Ingestion, Dermal  
Types of Harm: Birth Defects and Other Reproductive Harm

## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type or types of products (hereafter the "products") that are causing consumer and occupational exposures in violation of Proposition 65 (and that are covered by this Notice) are listed in Exhibit A in section VI below. The Violator's sales of these glassware products have been occurring from at least June 27, 2005, to the present. As a result of the sales of these products, exposures to the listed chemicals have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemicals produced by the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemicals from the reasonably foreseeable use of the products.

## **A. CONSUMER PRODUCT EXPOSURE**

California consumers, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemicals. By way of example, but not limitation, exposures occur when California citizens use (such as drink from the vessel), display, clean, repair, pack, unpack, arrange, store or otherwise handle the products. These tasks cause consumers to be exposed directly or indirectly through the routine touching of the parts or portions of the products containing readily available surface amounts of the listed chemicals. Additionally, exposure can occur through the routine touching and ingesting of other materials that become contaminated with the listed chemicals from the products as a result of these tasks. People likely to be exposed include both children and adults.

## **B. OCCUPATIONAL EXPOSURE**

Similarly, men and women in California use the products as a part of their jobs and are, therefore, subject to occupational exposures to the listed chemicals. Employees are exposed at the California business locations of the apparent manufacturer, distributor and retailer (and their agents, assigns and divisions) as well as all other California locations where the products, or the component parts thereof that include the listed chemicals are, by way of example but not limitation, used (such as drank from the vessel), packed, unpacked, labeled, arranged, displayed, cleaned, stocked, stored, repaired or otherwise handled. These tasks cause employee exposure directly or indirectly though the routine touching of the parts or portions of the products containing readily available surface amounts of the listed chemicals. Additionally, exposure can occur through the routine touching and ingesting of other materials that are contaminated with the listed chemicals from the products as a result of these tasks. These products are also used by sole proprietors and other persons in settings not covered by the Occupational Safety Health Act ("OSH Act"). This Notice alleges the violation of Proposition 65 with respect to occupational exposure governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance contained in the general hazard communication requirement to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the California Attorney General.

## **III. CONTACT INFORMATION**

Please direct all questions concerning this notice to me at the following addresses:

Russell Brimer  
c/o Laralei S. Paras  
c/o D. Joshua Voorhees  
Hirst & Chanler LLP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710  
Telephone: (510) 848-8880

#### IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

#### V. ADDITIONAL NOTICE INFORMATION

*THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER CAL. CODE REGS., TITLE 22 §12903(b)(4).*

Identified below are specific examples of products one or more of the categories or types of offending products recently purchased and witnessed as being available for purchase or use in California. Based on publicly available information, the retailers, distributors and/or manufacturers of these examples of the categories or types of products are also provided below. Brimer believes and alleges that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at other locations including, but not limited to, transactions made over-the-counter, business-to-business, through the internet and/or via a catalog by the Violator.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Shooter (#906517)	Hudson Group; Hudson News Fresno County, California	City Merchandise, Inc.
Shot Glass (#906516)		

#### VI. EXHIBIT A

<i>Product Category</i>	<i>Such As*</i>	<i>Toxins</i>
Shooters, Shot Glasses Glassware Intended for the Storage, Serving or Consumption of Food or Beverages with Colored Artwork, Designs and/or Markings on the Exterior Surface	Shooter (#906517)  Shot Glass (#906516)	Lead
Glassware Intended for the Storage, Serving or Consumption of Food or Beverages with Colored Artwork, Designs and/or Markings on the Exterior Surface	Shooter (#906517)  Shot Glass (#906516)	Cadmium

\*The specifically identified examples of one or more of the types of products which are subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemicals from other items within the product categories listed in Exhibit A. It is important to note that these examples are not meant to be an exhaustive or comprehensive identification of each specific offending product of the types listed under "Product Category" in Exhibit A. Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the types or categories described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings are provided to California citizens prior to purchase.

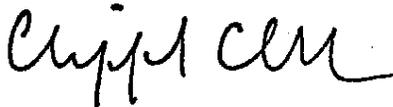
# CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Clifford A. Chanler, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice has violated Health and Safety Code §25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the *alleged* exposure to the listed chemicals that is the subject of this action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code §25249.7(h)(2) (*i.e.*, (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.)

Dated: 6/27/06



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Clifford A. Chanler

# PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710.

On June 27, 2006, I served the following documents:

**SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(d);**

**PROPOSITION 65: A SUMMARY;**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)**

served on the Violator listed below via First Class Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the Violator and placing such envelope in a United States Postal Service mailbox:

Jack Gindi, President  
City Merchandise, Inc.  
228 40<sup>th</sup> Street  
Brooklyn, NY 11232

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Via 2<sup>nd</sup> Day Air Service by placing such envelope in a Federal Express Drop-Off Box:</i>	The Attorney General of the State of California;
<i>By placing each envelope in a United States Postal Service mailbox, first class postage prepaid:</i>	The District Attorney for Each of the 58 counties in California; and The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento;

*A list of addresses for each of these recipients is attached.*

Executed on June 27, 2006 at Berkeley, California.

  
Rosalind Conrad

## SERVICE LIST

- The Honorable Tom Orloff  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612
- The Honorable William Richmond  
Alpine County District Attorney  
270 Laramie Street, Annex Building  
Markleeville, CA 96120
- The Honorable Todd Riebe  
Amador County District Attorney  
708 Court Street, #202  
Jackson, CA 95842
- The Honorable Michael Ramsey  
Butte County District Attorney  
25 County Center Drive,  
Administration Building  
Oroville, CA 95965
- The Honorable Jeffrey Tuttle  
Calaveras County District Attorney  
891 Mountain Ranch Road  
San Andreas, CA 95249
- The Honorable John R. Poyner  
Colusa County District Attorney  
547 Market Street  
Colusa, CA 95932
- The Honorable Robert J. Kochly  
Contra Costa County District Attorney  
725 Court Street, 4<sup>th</sup> Floor, Rm. 402  
Martinez, CA 94553
- The Honorable Michael Riese  
Del Norte County District Attorney  
450 H Street  
Crescent City, CA 95531
- The Honorable Gary Lacy  
El Dorado County District Attorney  
515 Main Street  
Placerville, CA 95667
- The Honorable Elizabeth Egan  
Fresno County District Attorney  
2220 Tulare Street, #1000  
Fresno, CA 93721
- The Honorable Robert Holzapfel  
Glenn County District Attorney  
540 West Sycamore  
Willows, CA 95988
- The Honorable Paul Gallegos  
Humboldt County District Attorney  
825 5<sup>th</sup> Street  
Eureka, CA 95501
- The Honorable Gilbert Otero  
Imperial County District Attorney  
939 West Main Street  
El Centro, CA 92243
- The Honorable Arthur Majilet  
Inyo County District Attorney  
168 North Edwards  
Independence, CA 93526
- The Honorable Edward R. Jagels  
Kern County District Attorney  
1215 Truxton Avenue  
Bakersfield, CA 93301
- The Honorable Ronald Calhoun  
Kings County District Attorney  
1400 West Lacey Boulevard  
Hanford, CA 93230
- The Honorable Gerhard Luck  
Lake County District Attorney  
255 North Forbes Street  
Lakeport, CA 95453
- The Honorable Robert Burns  
Lassen County District Attorney  
220 S. Lassen Street, Ste. 8  
Susanville, CA 96130
- The Honorable Steve Cooley  
Los Angeles County District Attorney  
210 West Temple Street  
Los Angeles, CA 90012
- The Honorable Ernest Licalsi  
Madera County District Attorney  
209 West Yosemite Avenue  
Madera, CA 93637
- The Honorable Edward Berberian  
Marin County District Attorney  
3591 Civic Center Drive, Room 130  
San Rafael, CA 94903
- The Honorable Robert Brown  
Mariposa County District Attorney  
5101 Jones Street  
Mariposa, CA 95338
- The Honorable Norman Vroman  
Mendocino County District Attorney  
100 North State Street, G-10  
Ukiah, CA 95482
- The Honorable Gordon Spencer  
Merced County District Attorney  
2222 M Street  
Merced, CA 95340
- The Honorable Jordan Funk  
Modoc County District Attorney  
204 S. Court Street, Room 202  
Alturas, CA 96101
- The Honorable George Booth  
Mono County District Attorney  
Old Court House, Main Street  
Bridgeport, CA 93517
- The Honorable Dean Filippo  
Monterey County District Attorney  
240 Church Street, #101  
Salinas, CA 93901
- The Honorable Gary Lieberstein  
Napa County District Attorney  
931 Parkway Mall  
Napa, CA 94559
- The Honorable Michael Ferguson  
Nevada County District Attorney  
201 Church Street, Suite 8  
Nevada City, CA 95959
- The Honorable Tony Rackaukas  
Orange County District Attorney  
401 Civic Center Drive West  
Santa Ana, CA 92701
- The Honorable Bradford Fenocchio  
Placer County District Attorney  
11562 B Avenue  
Auburn, CA 95603
- The Honorable Jeff Cunan  
Plumas County District Attorney  
520 Main Street, Room 404  
Quincy, CA 95971
- The Honorable Grover Trask II  
Riverside County District Attorney  
4075 Main Street  
Riverside, CA 92501
- The Honorable Jan Scully  
Sacramento County District Attorney  
901 G Street  
Sacramento, CA 95814
- The Honorable John Sarsfield  
San Benito County District Attorney  
419 4<sup>th</sup> Street, Second Floor  
Hollister, CA 95203
- The Honorable Michael Ramos  
San Bernardino County District Attorney  
316 N. Mountain View Avenue  
San Bernardino, CA 92415
- The Honorable Bonnie Dumanis  
San Diego County District Attorney  
330 W. Broadway Street, Suite 1320  
San Diego, CA 92101
- The Honorable Kamala Harris  
San Francisco County District Attorney  
850 Bryant Street, Room 325  
San Francisco, CA 94103
- The Honorable James Willett  
San Joaquin County District Attorney  
222 E. Weber Avenue, 2<sup>nd</sup> Floor, Room 202  
Stockton, CA 95201
- The Honorable Gerald Shea  
San Luis Obispo County District Attorney  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408
- The Honorable James Fox  
San Mateo County District Attorney  
400 County Center, Third Floor  
Redwood City, CA 94063
- The Honorable Thomas Sneddon, Jr.  
Santa Barbara County District Attorney  
1112 Santa Barbara Street  
Santa Barbara, CA 93101
- The Honorable George Kennedy  
Santa Clara County District Attorney  
70 West Hedding Street, West Wing  
San Jose, CA 95110
- The Honorable Bob Lee  
Santa Cruz County District Attorney  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060
- The Honorable Gerald Benito  
Shasta County District Attorney  
1525 Court Street, Third Floor  
Redding, CA 96001
- The Honorable Lawrence Allen  
Sierra County District Attorney  
100 Courthouse Square, Second Floor  
Downsville, CA 95936
- The Honorable James Andrus  
Siskiyou County District Attorney  
311 4<sup>th</sup> Street  
Yreka, CA 96097
- The Honorable David Paulson  
Solano County District Attorney  
675 Texas Street, Suite 4500  
Fairfield, CA 94533
- The Honorable Stephan Passalacqua  
Sonoma County District Attorney  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403
- The Honorable Carol Shipley  
Stanislaus County District Attorney  
800 11<sup>th</sup> Street, Room 200  
Modesto, CA 95353
- The Honorable Carl Adams  
Sutter County District Attorney  
446 Second Street  
Yuba City, CA 95991
- The Honorable Gregg Cohen  
Tehama County District Attorney  
444 Oak Street, Room L  
Red Bluff, CA 96080
- The Honorable David Cross  
Trinity County District Attorney  
101 Court Street  
Weaverville, CA 96093
- The Honorable Phillip Cline  
Tulare County District Attorney  
221 South Mooney Boulevard, Suite 224  
Visalia, CA 93291
- The Honorable Donald Segarstrom, Jr.  
Tuolumne County District Attorney  
2 South Green Street  
Sonora, CA 95370
- The Honorable Gregory Totten  
Ventura County District Attorney  
890 South Victoria Avenue  
Ventura, CA 93009
- The Honorable David C. Henderson  
Yolo County District Attorney  
301 Second Street  
Woodland, CA 95695
- The Honorable Patrick McGrath  
Yuba County District Attorney  
215 Fifth Street  
Marysville, CA 95901
- The Honorable Rockard Delgadillo  
Office of the City Attorney, Los Angeles  
200 North Main Street  
Los Angeles, CA 90012
- The Honorable Michael Aguirre  
Office of the City Attorney, San Diego  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101
- The Honorable Samuel Jackson  
Office of the City Attorney, Sacramento  
915 I Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814
- The Honorable Dennis J. Herrera  
Office of the City Attorney, San Francisco  
City Hall, Room 234  
San Francisco, CA 94102
- The Honorable Richard Doyle  
Office of the City Attorney, San Jose  
200 East Santa Clara Street  
San Jose, CA 95113